IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1166 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR JAVANJI SENDHAJI

Versus

STATE OF GUJARAT

Appearance:
MR DEEPAK M SHAH for Appellant
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellant herein was charged with offences punishable under Sections 302 and 307 of I.P.C. for having committed murder of his wife and for attempting to commit murder of his daughter Gitaben on 7th January, 1993 at about 9.00 p.m. at his residence situated at village Khara Dharva of Taluka Chanasma of Mehsana District. He came to be convicted by Additional Sessions Judge, Mehsana after being tried in Sessions Case No.112 of 1993 by virtue of a judgment and order dated October 6th, 1993 for both the offences. He was sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo R.I. for six months for the offence punishable under Section 302 of I.P.C. for murder of his wife Manguben. He was sentenced with R.I. for a period of 5 years with a fine of Rs.1,000/-, in default, to undergo R.I. for three months for attempting to commit murder of his daughter Gita. Both the sentences were ordered to run concurrently.

2. The facts of the case, in brief, are that the appellant was staying with his family at village Khara Dharva of Chanasma Taluka of Mehsana District. His marriage with Manguben was second marriage for her and she had a daughter named Gita begotten by her from her earlier marriage. It is the case of the prosecution that on 7th January, 1993, at about 9.00 p.m., while the accused was at his home, there was an altercation between him and his wife, deceased Manguben. Gita, who was present, intervened. The appellant picked up an axe and inflicted blows on Manguben which ultimately resulted into her death. In the same course of transaction, the appellant also inflicted injuries with the same axe on his daughter Gita and caused her grievous injuries due to which she became unconscious. She, however, could sustain the injuries and survived. In this episode, shouts were raised which attracted the neighbours to go to the house of the appellant. They got the doors opened by raising shouts. One Velaji Madhuji and others who entered the house noticed Manguben lying on the cot in a bleeding condition and Gitaben was lying beside her. Velaji Madhuji, therefore, asked the appellant to sit on one side and telephoned Chanasma police. The police came to the spot immediately and apprehended the appellant. The complaint of Velaji Madhuji was recorded, offence was registered and investigated. On having found that there is sufficient evidence against the appellant, a chargesheet was filed in the Court of JMFC, Chanasma. After following the procedure, the Judicial Magistrate, Chanasma committed the case to the Court of Sessions at Mehsana.

2.1 Charge was framed against the accused at Exh.2 to which he pleaded not guilty and claimed to be tried.

3. The learned Additional Sessions Judge, after considering the evidence on record, came to the conclusion that the prosecution could successfully establish all the charges levelled against the accused and convicted him, as stated above. Aggrieved by the said judgment and order, the present appeal is preferred by the convict appellant.

4. Learned advocate Mr. Shah appearing for the appellant has taken us through the record and proceedings. According to him and rightly so, the case hangs on the deposition of the injured eye-witness Gita, daughter of the appellant. He has taken us through that deposition and he submitted that in cross-examination, the witness has admitted that she woke up from sleep only on sustaining the blow. She, therefore, could not have seen what happened prior thereto. He submitted that the witness admits that immediately on receiving the injury, she became unconscious and therefore, she could not have seen what happened thereafter also. He has drawn attention of this court to an application given by the said victim to the Court of Sessions at Exh.34 indicating the circumstances in which the incident occurred and indicating other family circumstances and requesting the Court to consider that application as a compromise between the parties. Mr. Shah submitted that the victim girl is the step-daughter of the appellant and her deposition may not be given undue weightage, more so when there is a settlement between the parties.

5. The appeal is opposed to by the learned Additional PP Mr. Sheth.

6. Undisputedly, the offences with which the appellant was tried are non-compoundable offences and, therefore, application Exh.34 could not have been and cannot be considered by a Court of law.

7. If the evidence of Gitaben is seen which is at Exh.7, she clearly states that at the time of the incident, she herself, her mother Manguben, her father accused appellant and her brothers were in the house. The house was bolted from inside. Her mother and her father were having heated discussion. Her mother was telling her father that how can she run the house, if her father drinks. The witness says that she asked her mother not to speak and her father, therefore, told her

to remain quiet or else she would be cut to pieces. Soon thereafter, her father picked up an axe and inflicted blows on Manguben. The blows were given on throat and head. Thereafter, the appellant gave axe blows on the head and back of witness Gitaben. She became unconscious. Her brothers were raising shouts and somebody asked them to open the door and, therefore, they opened the door. Gitaben says that she was taken to hospital thereafter. The witness is cross-examined. She says that her father was driving city bus and used to go to duty early morning and return at about 11-12 o'clock in the night. On the date of the incident, her father had gone to Mehsana but had returned in the afternoon and after having dinner, they were sleeping. She denies the suggestion that she had gone to sleep and that she is not aware as to when her father came back. She states that the lights were not put off. She says that she woke up when she sustained injury and became unconscious after receiving the injury. However, in answer to the next question, she says that firstly, her mother was assaulted and thereafter, she was assaulted. She denies the suggestion that she has not seen the incident.

8. This clear and unshaken deposition of this witness who has herself sustained injuries is not possible to be discarded. Mr. Shah was not in a position to even account for any reason for not believing the deposition of this witness. The involvement of the appellant in commission of the crime is clearly established.

9. A look at the post-mortem notes (Exh.31) makes it clear that the cause of death was shock due to internal and external haemorrhage. The injuries were three in number, all on head. The injuries had gone brain deep and had damaged the brain. As per the doctor's evidence (Exh.23), they were sufficient, in ordinary course of nature, to cause death.

10. The evidence of Dr. Harenkumar Punjabhai Vania (Exh.29) indicates that he had examined injured Gitaben. He describes that injury no.3 was possible with a hard and blunt substance. The injuries were on head and back of the chest. They were possible with an axe.

11. The above evidence clearly establishes involvement of the appellant in the crime. He had caused injuries which proved to be fatal for deceased Manguben. The injuries were sufficient, in ordinary course of nature, to cause death. Considering the circumstances in which the incident occurred and the injuries were caused,

the case against the appellant has rightly been concluded in conviction under Section 302 of the I.P.C. There is no reason to disbelieve witness Gita who has witnessed the incident and has herself sustained injuries. A solitary admission that she woke up on receiving injury cannot render her deposition unbelievable. The deposition has to be read as a whole. Even during cross-examination, it has come that firstly injuries were caused on Manguben and thereafter, injuries were caused to Gitaben i.e. the witness herself, meaning thereby that Gitaben has seen the incident.

12. We have gone through the judgment and order impugned herein. We are in agreement with the reasoning adopted and findings given by the learned Additional Sessions Judge, while recording conviction. Learned advocate Mr. Shah could not point out any reason for interfering with the order. The appeal, therefore, must fail and the same is dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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